

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PENNSYLVANIA 19103**

IN THE MATTER OF:	:	Docket No. CWA -3-2001-0002
	:	
ALLEN FAMILY FOODS, INC.	:	PROCEEDINGS TO ASSESS CLASS II
274 NEALSON STREET	:	ADMINISTRATIVE PENALTY
HURLOCK, MD 21643	:	UNDER CLEAN WATER ACT
	:	SECTION 309(g)
	:	

**MEMORANDUM IN SUPPORT OF
COMPLAINANT'S MOTION FOR AN
ACCELERATED DECISION ON LIABILITY**

Complainant, United States Environmental Protection Agency ("EPA" or "Complainant"), submits the following in support of its Motion for an Accelerated Decision on Liability.

I. INTRODUCTION

This is a Clean Water Act ("CWA" or "the Act") enforcement proceeding for the assessment of administrative penalties under subsection 309(g) of the CWA, 33 U.S.C.

§ 1319(g). EPA initiated this action by issuance of the Complaint against Allen Family Foods (hereinafter "Respondent" or "Allen") on November 27, 2000. After obtaining EPA's agreement to an extension of time in which to answer, Respondent served its Answer and Request for

Hearing ("Answer") on February 15, 2001. Allen is an Industrial User ("IU")¹ which discharges to the sewer system of the City of Hurlock, Maryland, and the violations in the Complaint are all related to those discharges. In particular, the Complaint alleges that Respondent 1) exceeded the effluent limits contained in its permit²; 2) failed to report monitoring results to the City of Hurlock as required by its permit³; and 3) failed to report certain types of violations to the City of Hurlock within specified time periods as required by its permit.⁴ In this motion, Complainant seeks an accelerated decision as to liability as to the all three types of violations.

Complainant's motion is based upon the record in this matter, which includes, *inter alia*, the Complaint, Respondent's Answer to the Complaint and in other documents including Respondent's own test results and reports. The record shows that there is no genuine issue of material fact as to the Respondent's liability, and that the Complainant is entitled to an accelerated decision as a matter of law.⁵

¹ An Industrial User is a non-domestic source of pollutants into a Publically Operated Treatment Works which is regulated under section 307(b), (c) or (d) of the Clean Water Act.

² Complaint including ¶¶ 15-17.

³ Complaint including ¶¶ 18-22.

⁴ Complaint including ¶¶ 23-27.

⁵ EPA's Complaint also seeks administrative penalties. However, Complainant's Motion does not request an accelerated decision on the appropriateness of the proposed penalty. That determination is left for the hearing in this matter, or additional briefs, if so desired by the Court.

II. STATUTORY BACKGROUND

Congress enacted the Federal Water Pollution Control Act , 33 U.S.C. sections 1251 et seq., Clean Water Act sections 101 et seq., to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” 33 U.S.C. section 1251, Clean Water Act 101. Section 307 of the Clean Water Act directs the Administrator of the EPA to establish pretreatment standards for the introduction of pollutants into publicly owned treatment works (“POTW”) for pollutants that are not susceptible to treatment by the POTW or which could interfere with the operation of the POTW. Section 308 of the Act authorizes the Administrator to require the reporting of certain types of information necessary to the administration of the Act.

In accordance with sections 307 and 308 of the CWA the Administrator has promulgated regulations which establish pretreatment standards and reporting requirements. 40 C.F.R. Section 403. Among other things, section 403 prohibits Industrial Users from discharging to a POTW pollutants that interfere with or pass through a POTW. More specifically, Industrial Users who discharge to a POTW with an approved pretreatment program may not exceed the specific numerical limits for such pollutants developed by the POTW. 40 C.F.R. section 403.5. Section 403.12 requires Industrial Users to report certain information to the POTW. Violations of the effluent and reporting provisions constitute violations of sections 307 and 308 of the Clean Water Act. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, et al. v. Amerace Corp., Inc. et al., 740 F. Supp.1072, 1084-85 (D.N.J. 1990) (defendant-Industrial User found in violation of CWA for exceeding its effluent limits and failing to report to the POTW that it had violated its effluent limits); In re: Advanced Electronics, Inc., 2000 WL 1738750, Findings of Fact Nos. 31, 33, 35, 43, 44 (E.P.A. August 15, 2000)

(Respondent-Industrial User found in violation of CWA for exceeding its effluent limits and failing to provide periodic reports of sampling results to POTW); In re: Universal Circuits, Inc., 1900 WL 324102 (E.P.A. April 11, 1990) (Conclusion of Law that respondent exceeded effluent limits and failed to submit periodic reports as required by Section 403 and that such exceedences and failures constitute violations of sections 307 and 308 of the Clean Water Act).⁶

The CWA is a strict liability statute. In re Town of Luray, Docket No. CWA-III-185, 1997 CWA Lexis 10 (November 4, 1997, ALJ Kuhlmann), citing Stoddard v Western Carolina Regional Sewer Authority ,784 F. 2d 1200,1208 (4th Cir 1986); see also, Atlantic States Legal Foundation, Inc. v. Tyson Foods, 897 F.2d 1128 (11th Cir. 1990). Section 309(g) of the CWA, 33 U.S.C. § 1319(g) authorizes the Administrator to seek administrative penalties for violations of the Act. Section 309(g) provides for civil penalties of up to \$2,500 per day for each violation in a Class II administrative proceeding, with a maximum penalty not to exceed \$125,000 and, pursuant to Public Law 105-134, \$2,750 per day for each violation which occurred after January 31, 1997, and a maximum penalty of \$137,500. 33 U.S.C. § 1319(g).

III. STATEMENT OF UNDISPUTED FACTS

1. The town of Hurlock, Maryland operates a Publicly Owned Treatment Works ("POTW"). Hurlock's POTW has had an approved pretreatment program since March of 1985⁷ and

⁶ Concurrent with the filing of this motion, Complainant is filing request for permission to file an Amended Complaint. That Amended Complaint alleges that Respondent's failures to report constitute both violations of section 307 and 308 of the Clean Water Act.

⁷ Letter from S. Laskowski (EPA) to D. Bradley (Hurlock) dated March 10, 1985, attached hereto at Exhibit 1.

incorporated local limits for BOD, TSS and O&G into that program on or before January 11, 1993⁸.

2. Respondent, who owns and operates a poultry processing facility located at Nealson Street in Hurlock, Maryland, was issued discharge permits by the Hurlock POTW. The permits that are relevant to this matter are:

Permit No. 008-94, effective from February 1, 1994 to December 1, 1996 ("1994 Permit")⁹;

Permit No. 008-96, effective December 1, 1996 to March 5, 1997 ("1996 Permit")¹⁰;

The modified version of the 1996 Permit, effective March 5, 1997 to March 1, 1998 ("1996 R-2 Permit")¹¹;

A second modified version of the 1996 Permit, effective March 1, 1998 to December 1, 1999 ("1992 R-3 Permit")¹²; and

Permit No 008-99 effective December 1, 1999 ("1999 Permit")¹³, which was effective through the end of the time period relevant to this matter.

4. Respondent's discharge permits limited the amount of pollutants Allen was allowed to

⁸ Town of Hurlock Ordinance No. 1992-4 (particularly section 2.3) attached hereto as Exhibit 2; letter from D. Tyrrel to K. Irons dated March 2, 1993 (ordinance 1992-4 adopted January 11, 1993) also attached at Exhibit 2.

⁹ Exhibit 3.

¹⁰ Exhibit 4.

¹¹ Exhibit 5.

¹² Exhibit 6.

¹³ Exhibit 7.

discharge to the Hurlock POTW. These included limits for biochemical oxygen demand (“BOD”), total suspended solids (“TSS”), oil and grease (“O&G”) and pH.

Respondent’s permits also limited the amount of flow it could discharge. The limits relevant to this matter are as follows:

<u>Permit</u>	<u>Effective</u>	<u>Parameter</u>	<u>Limit</u>
1994 Permit	2/1/94 – 12/1/96	BOD	350 milgrams per liter (“mg/l”) ¹⁴
1994 Permit	2/1/94 – 12/1/96	TSS	450 mg/l ¹⁵
1994 Permit	2/1/94 – 12/1/96	Flow	800 gallons per day (“gpd”) ¹⁶
1996 Permit	12/1/96 – 3/5/97	BOD	350 mg/l ¹⁷
1996 R-1 Permit	3/5/97 – 3/1/98	BOD	350 mg/l ¹⁸
1996 R-1 Permit	3/5/97 – 3/1/98	Flow	900,000 gpd ¹⁹
1996 R-3 Permit	3/1/98 – 12/1/99	BOD	350 mg/l ²⁰
1996 R-3 Permit	3/1/98 – 12/1/99	Flow	900,000 gpd ²¹
1996 R-3 Permit	3/1/98 – 12/1/99	O&G	150 mg/l ²²
1999 Permit	12/1/99 – end of case	BOD	350 mg/l ²³

¹⁴ 1994 Permit at section I.A., attached hereto at Exhibit 3.

¹⁵ 1994 Permit at section I.A., attached hereto at Exhibit 3.

¹⁶ 1994 Permit at section I.A., attached hereto at Exhibit 3.

¹⁷ 1996 Permit at section I.A., attached hereto at Exhibit 4.

¹⁸ 1996 R-2 Permit at section I.A., attached hereto at Exhibit 5.

¹⁹ 1996 R-2 Permit at section I.A., attached hereto at Exhibit 5.

²⁰ 1996 R-3 Permit at section I.A., attached hereto at Exhibit 6.

²¹ 1996 R-3 Permit at section I.A., attached hereto at Exhibit 6.

²² 1996 R-3 Permit at section I.A., attached hereto at Exhibit 6.

²³ 1999 Permit at section I.A., attached hereto at Exhibit 7.

1999 Permit	12/1/99 – end of case	Flow	900,000 gpd ²⁴
1999 Permit	12/1/99 – end of case	pH	in range 5.0 - 8.5 standard units "S.U." ²⁵

5. Respondent's permits required that it test its effluent for the parameters identified above during the time period September 1996 through September 2000.²⁶
6. For parameters such as BOD, Respondent's tests on its effluent were recorded on laboratory data sheets by the laboratory to which Respondent sent its samples for analysis.²⁷
7. On occasion, the Town of Hurlock also tested Respondent's effluent. The results of these tests were also recorded on data sheets by the laboratory.²⁸
8. The results of Respondent's tests on its effluent were also recorded by Respondent in the monthly reports it was required to submit to the Town of Hurlock.²⁹

²⁴ 1999 Permit at section I.A., attached hereto at Exhibit 7.

²⁵ 1999 Permit at section I.A., attached hereto at Exhibit 7.

²⁶ 1994 Permit at section I.A., Exhibit 3; 1996 Permit at section I.A., Exhibit 4; 1996 R-2 Permit at section I.A., Exhibit 5; 1996 R-3 Permit at section I.A., Exhibit 6; 1999 Permit at section I.A. Exhibit 7.

²⁷ An example of the laboratory data sheets and forms showing flow monitoring results is attached at Exhibit 8.

²⁸ Letter from F. Wright (Town of Hurlock) to A. Toy (EPA) dated October 15, 2001 (Hurlock periodically obtains and analyzes effluent samples using the laboratory Envirocorp), Exhibit 9. An example of such test results is attached at Exhibit 10.

²⁹ An example of Respondent's monthly reports to Hurlock is attached at Exhibit 11.

9. Respondent sent notices to the Town of Hurlock on several occasions, notifying Hurlock of certain instances of non-compliance with its permits.³⁰
10. The Town of Hurlock issued Notices of Violation ("NOVs") to Respondent on a nearly monthly basis indicating occasions on which Respondent exceeded its permit limits during the time period September 1996 through September 2000.³¹
11. In total, the Respondent's own analyses and those of the Town of Hurlock show that Respondent violated its effluent limits 233 times during this four year period.³²

³⁰ An example of these notifications which Respondent submitted to the Hurlock POTW are attached at Exhibit 12.

³¹ An example of such an NOV is attached at Exhibit 13. It should be noted that the NOVs appear on the letterhead of Davis, Bowen and Friedel because that firm acts as Hurlock's pretreatment coordinator. Among the tasks the firm performs is to receive reports from Industrial Users and draft Notices of Violations that are sent to Industrial Users on behalf of Hurlock. Letter from F. Wright (Town of Hurlock) to A. Toy (EPA) dated October 15, 2001, Exhibit 9.

³² For the convenience of the court, EPA has prepared a list of the effluent limit violations for which it seeks a determination of liability in this motion. That list appears in table form at the front of Exhibit 14. The last column of the table identifies the document or documents which evidence each particular violation. The documents which evidence the various effluent limitation violations that occurred within any given month have been collected and appear within the numbered tabs within Exhibit 14. These documents include Respondent's own sampling data, Respondent's monthly reports to the Hurlock POTW, Respondent's notification to Hurlock that it had violated its permit and NOVs issued by the Hurlock POTW to Respondent. For the convenience of the Court, the documents evidencing all violations that occurred within a given month, e.g., Respondent's monthly report and Hurlock's NOV, are included at the front of each numbered tab. Documents that identify individual violations, such as sampling data for individual days and Respondent's notifications that it had violated its permit, follow.

Please note that there are 234 entries in this table of violations, but two entries are for exceedences of the TSS limit on 10/9/96. In tallying the total number of violations, EPA counted only one TSS violation for that day.

12. Respondent's discharge permits required it to monitor its effluent for the identified parameters at certain specified intervals, and then to report the data obtained to the Hurlock POTW within certain specified time periods. Those sampling and reporting periods were as follows:

<u>Permit</u>	<u>Effective</u>	<u>Parameter</u>	<u>Sampling Frequency</u>	<u>Reporting Date</u>
1994 Permit	2/1/94-12/1/96	BOD	1x / week	15 days after end reporting period ³³
1994 Permit	2/1/94-12/1/96	TSS	1x / week	15 days after end reporting period ³⁴
1994 Permit	2/1/94-12/1/96	O&G	2x / month	15 days after end reporting period ³⁵
1996 Permit, (incl. R-1 & R-3)	12/1/96-12/1/99	BOD	3x / week	15 days after end reporting period ³⁶
1996 Permit, (incl. R-1 & R-3)	12/1/96-12/1/99	TSS	3x / week	15 days after end reporting period ³⁷
1996 Permit, (incl. R-1 & R-3)	12/1/96-12/1/99	O&G	2x / month	15 days after end reporting period ³⁸

³³ 1994 Permit at section I.A., Exhibit 3. Each of the permits required Respondent to submit the results of monitoring to the POTW postmarked no later than the 15th day of the month following the end of the reporting period. They also defined the end of the reporting period to be the end of each month. 1994 Permit at section I.D.1., Exhibit 3; 1996 Permit at section I.D.1., Exhibit 4; 1996 R-2 Permit at section I.E.1., Exhibit 5; 1996 R-3 Permit at section I.E.1., Exhibit 6; 1999 Permit at section I.E.1., Exhibit 7.

³⁴ 1994 Permit at sections I.A. and I.D.1., Exhibit 3.

³⁵ 1994 Permit at sections I.A. and I.D.1., Exhibit 3.

³⁶ 1996 Permit at sections I.A. and I.D.1., Exhibit 4; 1996 R-2 Permit at sections I.A. and I.E.1., Exhibit 5; and 1996 R-3 Permit at sections I.A. and I.E.1., Exhibit 6.

³⁷ 1996 Permit at sections I.A. and I.D.1., Exhibit 4; 1996 R-2 Permit at sections I.A. and I.E.1., Exhibit 5; and 1996 R-3 Permit at sections I.A. and I.E.1., Exhibit 6.

³⁸ 1996 Permit. at sections I.A. and I.D.1., Exhibit 4; 1996 R-2 Permit at sections I.A. and I.E.1., Exhibit 5; and 1996 R-3 Permit at sections I.A. and I.E.1., Exhibit 6.

1996 Permit, (incl. R-1 & R-3)	12/1/96-12/1/99	pH	1x / day	15 days after end reporting period ³⁹
1996 Permit, (incl. R-1 & R-3)	12/1/96-12/1/99	flow	continuously	15 days after end reporting period ⁴⁰
1999 Permit	12/1/99-end of case	BOD	3x / week	15 days after end reporting period ⁴¹
1999 Permit	12/1/99-end of case	TSS	3x / week	15 days after end reporting period ⁴²
1999 Permit	12/1/99-end of case	O&G	2x / month	15 days after end reporting period ⁴³
1999 Permit	12/1/99-end of case	pH	1x / day	15 days after end reporting period ⁴⁴
1999 Permit	12/1/99-end of case	COD ⁴⁵	1x / day	15 days after end reporting period ⁴⁶

13. Respondent repeatedly failed to submit the required sampling results to the Hurlock

POTW. During the time period April 1996 through January 2000, Respondent failed to report its sampling results a total of 50 times.⁴⁷

³⁹ 1996 Permit at sections I.A. and I.D.1., Exhibit 4; 1996 R-2 Permit at sections I.A. and I.E.1., Exhibit 5; and 1996 R-3 Permit at sections I.A. and I.E.1., Exhibit 6.

⁴⁰ 1996 Permit at sections I.A. and I.D.1., Exhibit 4; 1996 R-2 Permit at sections I.A. and I.E.1., Exhibit 5; and 1996 R-3 Permit at sections I.A. and I.E.1., Exhibit 6.

⁴¹ 1999 Permit at sections I.A. and I.D.1., Exhibit 7.

⁴² 1999 Permit. at sections I.A. and I.D.1., Exhibit 7.

⁴³ 1999 Permit. at sections I.A. and I.D.1., Exhibit 7.

⁴⁴ 1999 Permit. at sections I.A. and I.D.1., Exhibit 7.

⁴⁵ "COD" refers to Chemical Oxygen Demand.

⁴⁶ 1999 Permit at sections I.A. and I.D.1., Exhibit 7.

⁴⁷ For the convenience of the court, EPA has prepared a list of the failure to report violations for which it seeks a determination of liability in this motion. That list appears in table form at the front of Exhibit 15. That table shows the date of the violation, the reports Respondent submitted, the number and frequency of reports mandated by the applicable permit reporting requirement, the number of resulting violations and the specific evidence supporting each violation. The various types of evidence, such as the NOV's issued by the Hurlock POTW to Respondent, Respondent's

14. Respondent's discharge permits required it to report to the Hurlock POTW certain violations within 24 hours of Respondent becoming aware of that violation.⁴⁸
15. Respondent's permits further required it to provide certain specified information about the violation to the Hurlock POTW in writing within five days.⁴⁹
16. On two occasions during the period February 1997 through January 2000, Respondent provided notice, but not within the requisite 24 hour time period, and 14 times Respondent failed to make the requisite "24 hour notice" at all.⁵⁰
17. In addition, on four occasions Respondent failed to provide the required written information within the five day time period, and on five occasions it failed to provide such written information at all.⁵¹

monthly reports and Respondent's notifications to Hurlock that it had violated its permits are attached at relevant tabs within that exhibit. In addition, since several of the reporting requirements involved weekly intervals, calendars showing the weeks for the relevant time periods also have been included in Exhibit 15.

⁴⁸ 1994 Permit at section I.D.2., Exhibit 3; 1996 Permit at section I.D.2., Exhibit 4; 1996 R-2 Permit at section I.E.2., Exhibit 5; 1996 R-3 Permit at section I.E.2., Exhibit 6; 1999 Permit at section I.D.2., Exhibit 7.

⁴⁹ Id.

⁵⁰ These failures to provide notification have been summarized in the table at the front of Exhibit 16. That table shows the date of the violation, the absence or tardiness of the required notification and the specific evidence supporting each violation. The various types of evidence, such as the NOVs issued by the Hurlock POTW are attached at relevant tabs within that exhibit.

⁵¹ Id.

IV. ARGUMENT

A. Standard for Granting an Accelerated Decision

Pursuant to 40 C.F.R. § 22.20(a) an accelerated decision may be rendered "if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law, as to all or any part of the proceeding." It is well settled that this standard for accelerated decision in EPA proceedings parallels the standard for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. In re: Corporacion para el Desarrollo Economico y Futuro de la Isla Nena, et al., CWA-11-97-61 (February 3, 1998) at 3. The same principles apply to the resolution of such motions under the two sets of rules. See e.g., Id.; In re Tillamook County Creamery Ass'n., EPCRA-1094-03-01-325 (Sept. 18, 1995) at 4.

The party moving for summary judgment has an initial burden to show the absence of any genuine issues of material fact by "identifying those portions of the 'pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any' which it believes demonstrate the absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)(quoting Fed. R. Civ. Proc. 56(c). Upon such showing, the opponent of the motion "may not rest upon the mere allegations or denials of [its] pleading, but [its] response... must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. Proc. 56(e). The party opposing the motion must demonstrate that the issue is "genuine" by referencing probative evidence in the record upon which a reasonable finder of fact could return a verdict in that party's favor. In re: Clarksburg Casket Company, EPCRA Appeal No. 98-8, slip op. at 9 (EAB, July 16, 1999); In re: Green Thumb Nursery, 6 E.A.D. 782, 793 (EAB 1997). The opposing party must demonstrate that the factual issue is material by showing that, "under the

governing law, it might affect the outcome of the proceeding." Clarksburg Casket, slip op. at 9.

See also, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986).

B. The Evidence is Clear that Respondent Violated its Effluent Limits and Failed to Report

In this case, all the evidence supports a finding that Respondent violated the effluent limits contained in its IU permit, that it failed to report its sampling results as required and that it failed to notify Hurlock of certain instances of non-compliance. These violations occurred numerous times over the course of many years.

First, from September 1996 through September 2000 Respondent exceeded its permit limits hundreds of times. The majority of these violations are shown by Respondent's own testing. Respondent was required by its permit to test both for the amount of flow it was contributing to the Hurlock POTW and for the concentration of certain pollutants it was contributing.⁵² Respondent sent its effluent samples to a laboratory for analysis.⁵³ A comparison of the data sheets from that lab to the limits identified in Respondent's permits show that in numerous instances the levels of pollutants in Respondent's effluent exceeded that allowed.⁵⁴ Respondent also submitted both the analytical results it received from the laboratory

⁵² 1994 Permit at section I.A., Exhibit 3; 1996 Permit at section I.A., Exhibit 4; 1996 Permit R-2 at section I.A., Exhibit 5; 1996 Permit R-3 at section I.A., Exhibit 6; 1999 Permit at section I.A., Exhibit 7.

⁵³ See, e.g., examples in Exhibit 8.

⁵⁴ The exceedences for which EPA seeks a determination of liability in this motion have been summarized in the table at the front of Exhibit 14. The supporting evidence, such as Respondent's

and its own flow measurements to the Hurlock POTW in the form of monthly monitoring reports, many of which it certified.⁵⁵ A comparison of those values to the limits in Respondent's permits also discloses many, many effluent limitation exceedences⁵⁶ Respondent also sent the Hurlock POTW notification that it had exceeded its limits on certain occasions.⁵⁷ Those reports are also evidence of the violations.⁵⁸ Moreover, evidence comes from samples of Respondent's effluent taken by Hurlock and from the Notices of Violation "NOV" Hurlock sent to Respondent documenting violations.⁵⁹

Second, on 50 occasions Respondent failed to report its sampling results to the Hurlock POTW as required. Each of the permits held by Respondent during the applicable period identified the frequency with which Respondent was to sample for each of the specified parameters.⁶⁰ Those permits further contained a requirement that Respondent report those

laboratory's analyses of its effluent are attached at relevant tabs within that exhibit.

⁵⁵ See, e.g., examples in Exhibit 11.

⁵⁶ Exhibit 14.

⁵⁷ See, e.g., example in Exhibit 12.

⁵⁸ Exhibit 14.

⁵⁹ Exhibit 14.

⁶⁰ 1994 Permit at section I.A., Exhibit 3; 1996 Permit at I.A., Exhibit 4; 1996 R-2 Permit at section I.A., Exhibit 5; 1996 R-3 Permit at I.A., Exhibit 6; 1999 Permit at section I.A., Exhibit 7.

sampling results to Hurlock.⁶¹ Documents issued by the firm which acts as Hurlock's Pretreatment Coordinator to Respondent approximately concurrent with the period of reporting show that in many instances Respondent failed to provide those sampling results to Hurlock.⁶² On some occasions, Respondent's own letters to Hurlock admit these failures.⁶³

Third, although required by its permits to notify the Hurlock POTW when it committed violations, Respondent failed repeatedly to do so. Respondent's permits during the relevant period each included a requirement that Respondent notify Hurlock when it violated certain provisions of its permits, including its effluent limits. Those provisions required that notice (which may be verbal) be made within 24 hours and that written notice be provided within five days.⁶⁴ Documents from Hurlock to Respondent, however, show that in many instances Respondent either was late in making the required notification or failed to make that notification

⁶¹ 1994 Permit at section I.D.1., Exhibit 3; 1996 Permit at I.D.1., Exhibit 4; 1996 R-2 Permit at section I.E.1., Exhibit 5 1996 R-3 Permit at I.E.1., Exhibit 6; 1999 Permit at section I.A., Exhibit 7.

⁶² These failures to report have been summarized in the table at the front of Exhibit 15. The evidence, such as the NOV's issued by the Hurlock POTW (Davis, Bowen & Friedel), to Respondent are attached at relevant tabs within that exhibit.

⁶³ See Respondent's violation notices in Exhibit 15.

⁶⁴ 1994 Permit at section I.D.2., Exhibit 3; 1996 Permit at section I.D.2., Exhibit 4; 1996 R-2 Permit at section I.E.2., Exhibit 5 1996 R-3 Permit at section I.E.2., Exhibit 6; 1999 Permit at section I.D.2., Exhibit 7.

at all.⁶⁵

In sum, Respondent should be found liable for its repeatedly failed to comply with the terms of its permits. This Court should find Respondent liable for 233 effluent exceedence violations, 50 failure to report violations and 25 failure to notify violations.

V. CONCLUSION

Complainant respectfully requests that judgement on liability as a matter of law be entered in favor of Complainant and against Respondent. In the alternative, since partial accelerated decisions are allowable under 40 C.F.R. § 22.20, Complainant seeks an accelerated decision for every violation as to which the Court determines no genuine issue of material fact exists.

Respectfully submitted,

Date: _____

Kerry Nelson
Assistant Regional Counsel
Office of Regional Counsel

⁶⁵ These failures to provide notification have been summarized in the table at the front of Exhibit 16. The various types of evidence, such as the NOVs issued by the Hurlock POTW are attached at relevant tabs within that exhibit.


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III

CERTIFICATE OF SERVICE

I certify that on the date noted below, I filed with the Regional Hearing Clerk, USEPA Region III the original and one copy of Complainant's Motion for an Accelerated Decision on Liability along with the memorandum in support thereof and proposed order. The Motion and Memorandum were filed in two forms: one containing documents potentially subject to a claim of CBI and one from which such documents had been redacted. I also served a copy of each form of the Motion, supporting memo and form of order upon the following via first class mail:

Anthony G. Gorski, Esquire
Schaller & Gorski, LLP
182 Duke of Gloucester Street
Annapolis, MD 21401

Date: 10/23/01


Kerry Nelson
Senior Assistant Regional Counsel
Office of Regional Counsel